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HISTORY OF THE INHERITANCE TAX LAW OF INDIANA AND RESUME OF IMPORTANT PROVISIONS CONTAINED IN THE 1931 STATUTE

By CLARENCE B. ULLUM*

The first Inheritance Tax Law of Indiana was passed in 1913. The tax was imposed on the interest received by direct and collateral relatives at progressive rates of taxation, but no tax was imposed on intangibles of a non-resident decedent's estate. This act was substantially a copy of the 1911 Inheritance Tax Statute of New York, except as to rates and exemptions and was similar also to the statutes of Illinois, California and Wisconsin. Minor amendments were made by the Legislatures of 1915, 1917 and 1919. The statute was again amended in 1921, which provided for a new table of rates and exemptions, and a tax upon the transfer of intangible property of a non-resident decedent, including stocks of Indiana corporations. There were no changes made in 1923, 1925 and 1927. The 1913 statute, with amendments, was repealed in 1929, and a new statute was passed which was likewise repealed in 1931. The present statute contains changes in rates, exemptions, procedure and administration, as well as imposes an additional inheritance tax or "estate tax", to completely absorb the eighty per cent credit provided in the United States Internal Revenue Act of 1926 for the payment of any estate, inheritance, legacy or succession taxes actually paid to any state or territory or the District of Columbia.

The inheritance tax imposed is at progressive rates upon the values of interest received from a decedent's estate by direct as well as collateral relatives and strangers in blood. Resident and non-resident estates are taxed upon the transfers of all real and personal property within the jurisdiction of the State at the same rates, except that the State of Indiana has become one of the reciprocal states.

Reciprocity is the result of a co-operative effort among states to do away with a transfer tax on intangible personal property of non-resident estates. This movement was necessitated due to the multiple taxation resulting from the assertion

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of jurisdiction on one theory or another. The multiple taxation resulting from this assertion of jurisdiction centered around intangible property, as it has long been settled that real property can only be taxed by the jurisdiction wherein such property is located and further as decided by the United States Supreme Court in the case of *Frick v. Pennsylvania*, 268 U. S. 473, tangible personal property can only be taxed in the jurisdiction where such property has an actual situs. The theory of reciprocity, simply stated, means that we shall not impose a transfer tax on intangibles owned by residents of your state, if you will grant residents of our state a like exemption. Since the movement was begun to avoid multiplicity of taxation, it is not thought that residents of states that pay no inheritance tax should enjoy the advantages of reciprocity and thus entirely escape the payment of a transfer tax on such intangibles. The advantages of reciprocity can readily be seen in the avoidance of multiple taxation, which is contrary to natural justice, as well as the permitting of a freer flow of capital for investment by residents of other states.

Exemptions and rates of tax to the immediate family, Class A beneficiaries, now conform to the rates and exemptions as provided by the 1921 statute which accorded a widow an exemption of \$15,000; children of a decedent under the age of eighteen, \$5,000 and over eighteen \$2,000, with a primary rate of tax of one per cent on the first block of \$25,000 in excess of the exemption allowed and two per cent on the second block of \$25,000. In other respects the rates and exemptions to Class A beneficiaries conform to the 1929 statute. There were no changes made in the exemptions and rates to Class B or C beneficiaries as contained in the 1929 law.

It is now the duty of representatives or heirs of an estate to file with the court a schedule of the assets of a decedent's estate within six months from the date of death of the decedent, or within a period of time additionally granted by the court. A penalty of 50c per day is charged in all cases in which said schedule is not filed as provided. The maximum amount of penalty chargeable may not exceed \$50.00 and is to be included in the court's decree in taxable and non-taxable estates and shall be payable to the county treasurer of the county in which the court is sitting. All of the schedules are to be referred by the court to the appraiser and an appraisal made upon each estate. The fee of appraiser in non-taxable estates is to be

paid by the estate on the basis of \$1.00 for non-taxable estates having a net value of under \$500; and \$5.00 for estates in excess of \$500 and not to exceed \$5,000, and \$10.00 for estates in excess of \$5,000 and determined to be non-taxable.

Property jointly held on the death of one of the joint owners is all taxable to the survivor, excepting that portion which may be proved to have originally belonged to the survivor. Persons, corporations or associations holding jointly owned personal property of a decedent must receive a written consent to transfer from the State Board of Tax Commissioners.

The State Board of Tax Commissioners has jurisdiction of estates subject to the payment of an additional inheritance tax, commonly called "estate tax", in cases in which the original amount of tax determined by the court having probate jurisdiction in the county in which the decedent was a resident does not equal a total amount of 80% of the amount of the United States estate tax imposed. It is required that representatives of an estate paying the United States Government a federal estate tax shall file with said Board of Tax Commissioners a duplicate of the United States estate tax return that the State Board of Tax Commissioners may impose in such cases an additional amount of tax to equal 80% of the United States estate taxes. This provision is in retroactive operation from the effective date of the credit provision contained in the United States Revenue Act of 1926. It is the intent and purpose to obtain for the State of Indiana the full benefit of the credit allowed in all such estates.

The greatest changes in the Inheritance Tax Law may be summarized as the imposing of an "estate tax" on estates of decedents paying a United States estate tax, the change in rates and exemptions to Class A beneficiaries; the requirement of written consents to transfer personal property jointly held; and the provision for the filing of schedules and appraising of all decedents' estates. These changes should mean additional revenue to the State of about \$750,000 annually, and approximately \$1,500,000 to \$2,000,000 on those estates paying a United States estate tax before the effective date of the present statute.

Owing to the general and wide-spread feeling that our present taxes are more than ordinarily burdensome, due to the economic depression, the additional revenue obtainable for the State of Indiana by the imposing of an estate tax at no additional expense to the estates should receive the greatest co-operation possible

from the representatives of the estates on which the tax is to be imposed. Because of this happy circumstance, it is possible to receive additional taxes of a considerable amount without causing a payment of taxes for an aggregate amount to exceed the amount that would ultimately be paid for inheritance and estate taxes combined. The enactment of the "estate tax" provision means only that the United States Government will receive a lesser amount of estate taxes, but the total amount of inheritance and federal estate taxes imposed on an estate cannot by this section of the inheritance tax statute exceed the total amount of United States estate taxes originally imposed.

The total inheritance taxes imposed during the fiscal year ending September 30, 1930, were \$1,636,166.50, which exceeded by \$468,793.50 the largest amount previously imposed. The average of state, county and township rates being \$2.81 per \$100 for 1930, the inheritance taxes imposed for said fiscal year represent the collections which would be received on general property tax assessments of property assessed at \$58,226,565.00. This would be approximately equal to the assessed valuation of all property in Knox or Porter Counties.

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